

DAR Part 9
Non-Competitive Purchases and Unsolicited Proposals

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Non-competitive Purchases and Unsolicited Proposals

9.000 Scope of Part

This subpart sets forth procedures for non-competitive purchases. This subpart also sets forth guidance concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

9.001 Definitions

“Non-competitive Purchases” means a purchase that was not acquired through full and open competition methods.

“Unsolicited Proposal” means a written proposal for a new or innovative idea that is submitted to a department or school on the initiative of the offeror for the purpose of obtaining a contract with the District, and that is not in response to a Request for Proposals, Request for Information, research topic, or any other District-initiated solicitation or program.

Subpart 9.1 – Non-competitive Purchases

9.100 Soliciting from a single source: *Contracting officers* may solicit from one source if the *contracting officer* determines that the circumstances of the contract action deem only one source is determined to be appropriate by an objective business decision. Examples:

- Urgency/emergency
- Exclusive licensing agreements
- Leveraged volume purchases (existing competed contract)
- Standardization/compatibility with existing systems
- Scope modification to existing contract

9.101 Soliciting from a sole source: Sole source exists when a single seller controls the supply of products or services in a defined market. Examples:

- Technology leadership
- Patent protection
- Limited/exclusive franchise distributorships
- Mergers and acquisitions

9.102 For non-competitive purchases the *contracting officer* must provide a Justification and Approval stating why it is in the *best interest of the District* to purchase the requirement without competition. Approval for non-competitive purchases over \$100,000 *shall* be obtained from the Executive Director of Procurement and Contracting before the procurement action is initiated.

Subpart 9.2 -- Unsolicited Proposals

The District encourages the submission of new and innovative ideas, when the new and innovative ideas do not fall under topic areas already being planned for procurement.

9.200 General

- a. Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the District to be made available to the District. Unsolicited proposals are offered with the intent that the District will enter into a contract with the offeror for research and development or other efforts supporting the District mission, and often represent a substantial investment of time and effort by the offeror.
- b. The following are not unsolicited proposals:
 - (1) Advertising materials that are designed to acquaint the District with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the District's interest in buying such products or services.

- (2) Commercial items offer of a commercial item that the vendor wishes to see introduced in the District's supply system as an alternate or a replacement for an existing supply item.
 - (3) Contributions that offer a concept, suggestion, or idea to the District for its use with no indication that the source intends to devote any further effort to it on the District's behalf.
- c. A valid unsolicited proposal must:
- (1) Be innovative and unique;
 - (2) Be independently originated and developed by the offeror;
 - (3) Be prepared without District supervision, endorsement, direction, or direct District involvement;
 - (4) Include sufficient detail to permit a determination that District support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and
 - (5) Not be an advance proposal for a known District requirement that can be acquired by competitive methods.
- d. Unsolicited proposals in response to a publicized general statement of District needs are considered to be independently originated.

9.201 Preliminary Contact

- a. Preliminary contact with District technical or other appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the District may save considerable time and effort for both parties.
- b. Only District Contracting Officers have the authority to bind the District regarding unsolicited proposals.

Subpart 9.3 -- Content Requirements for Unsolicited Proposals

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

9.300 - Basic Information Requirements:

- a. Offeror's name and address and type of organization; e.g., profit, nonprofit, educational;
- b. Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- c. Identification of proprietary data to be used only for evaluation purposes;
- d. Names of other Federal, State, local agencies or school districts or parties receiving the proposal or funding the proposed effort;
- e. Date of submission; and
- f. Signature of a person authorized to represent and contractually obligate the offeror.

9.301 Technical Information Requirements:

- a. Concise title and abstract (approximately 200 words) of the proposed effort;
- b. A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;
- c. Names and biographical information on the offeror's key personnel who would be involved, including alternates; and
- d. Type of support needed from the agency; e.g., facilities, equipment, materials, or personnel resources.

9.302 Supporting Information Requirements:

- a. Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- b. Period of time for which the proposal is valid (a 6-month minimum is suggested);

- c. Type of contract preferred;
- d. Proposed duration of effort;
- e. Brief description of the organization, previous experience, relevant past performance, and facilities to be used;
- f. Other statements, if applicable, about organizational conflicts of interest, and environmental impacts; and
- g. The names and telephone numbers of District technical or other District points of contact already contacted regarding the proposal.

9.303 Proprietary Information

If Proprietary information is contained in an offeror's unsolicited proposal, it must be marked appropriately.

Subpart 9.4 -- District Procedures

9.400 Validity of Need

Before initiating a comprehensive evaluation, a contracting officer selected by the Executive Director of Contracting will determine if the proposal --

1. Is a valid unsolicited proposal, meeting the requirements above;
2. Is related to the District mission;
3. Contains sufficient technical and cost information for evaluation;
4. Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and
5. Has proprietary items identified for non-disclosure.

9.401 Proprietary Information

District personnel shall not disclose restrictively marked information. An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the District except for evaluation purposes.

9.402 Proposal Processing

If the proposal meets these requirements, the Contracting Officer will promptly acknowledge receipt and process the proposal.

9.403 Rejection Notice

If a proposal is rejected because the proposal does not meet the requirements, the Contracting Officer will promptly inform the offeror of the rejection in writing.

Subpart 9.5 -- Evaluation

9.500 Contracting Officer's Responsibilities

The Contracting Officer will circulate the unsolicited proposal for evaluation. The evaluators shall make a recommendation to accept or reject the unsolicited proposal when the evaluation is complete. A favorable evaluation of an unsolicited proposal does not in itself justify awarding a contract without providing for full and open competition. An evaluation of an unsolicited proposal will consider the following factors:

1. Unique and innovative methods, approaches, or concepts demonstrated by the Proposal.
2. Overall merits of the proposal.
3. Potential contribution of the effort to the District's specific mission.
4. The offeror's capabilities, related experience, facilities, techniques, or unique combination of these factors for achieving the proposal objectives.
5. The qualifications, capabilities, and experience of the proposed team or key personnel critical to achieving the proposal objectives.
6. The realism of the proposed price.

Subpart 9.6 – Negotiations and Award

9.600 Negotiations

The contracting officer may commence negotiations on a sole source basis only when:

1. An unsolicited proposal has received a favorable evaluation.
2. A justification and approval has been obtained.
3. The District customer sponsoring the contract furnishes the necessary funds.

Subpart 9.7 – Proposal Information Usage Prohibitions

- a. District personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.
- b. District personnel shall not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties.

Subpart 9.8 -- Limited Use of Proposal Information

An unsolicited proposal may include information that the offeror does not want disclosed to the public for any purpose or used by the District except for evaluation purposes. If the offeror wishes to restrict the information, the following may be used. The title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of -- or in connection with -- the submission of these data, the District shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the District's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [insert numbers or other identification of sheets].

- a. The offeror shall also mark each sheet of data they wish to restrict.
- b. The District Contracting Officer shall ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the District's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a District's notice, and shall not by itself be construed to impose any liability upon the District or District personnel for disclosure or use of data contained in this proposal.
- c. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the District.
- d. When the District receives an unsolicited proposal without any restrictive markings and an evaluation outside the District is necessary, the contracting officer shall:
 - (1) Obtain permission from the offeror before release of the proposal for evaluation by non-District personnel.
 - (2) Require any non-District evaluator to agree in writing that data in the proposal will not be disclosed to others outside the District.